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ABSTRACT

This paper briefly introduces alternative dispute resolution (ADR) processes and their fundamental principles. The paper provides a review of the literature on ADR and discusses its applicability in educational settings. The concept of conflict is explained, along with analysis of the limitations of traditional conflict resolution processes. The paper concludes with a discussion of the ADR processes and implications for educational settings and recommendations. (EH)

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Alternative Dispute Resolution (ADR): A Different Framework for Conflict Resolution in Educational Settings

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Introduction and Purpose of the Paper

This paper is a brief introduction to alternative dispute resolution processes and their fundamental principles. The primary purpose of this article is to review the literature of alternative dispute resolution and to discuss its applicability in educational settings. The concept of conflict will be briefly explained. Next, the limitations of traditional conflict resolution processes will be analyzed. After discussing alternative dispute resolution processes, the paper will conclude implications for educational settings and recommendations.

Definition of Conflict

Coser, in his classic book, *The Functions of Social Conflict*, defined conflict as "a struggle over values and claims to scarce status, power and resources in which the aims of the opponents are to neutralize, injure or eliminate their rivals" (1956, p. 8).

We live in a world of conflicting interests and great social, political, and economic inequalities of status, power, and resources. The clash of classes, riots, rebellions, revolutions, strikes, marches, demonstrations, protest rallies, and racial, religious, and community conflicts are some examples of social conflict. Conflict is not a new phenomenon. Its history goes back to the dawn of man[woman]. Himes (1980) stated that archeological and historical records from the earliest times show people engaged in struggles with their fellows. We see disputes among children, spouses, parents and children, neighbors, ethnic and racial groups, fellow workers, superiors and subordinates, organizations, communities, and citizens and their government (Moore, 1986).

Conflict is a fact and daily part of the lives of people as well as organizations. Most of us see it as stressful confrontation. Dispute may be stressful and unpleasant, but we need to learn how to deal with it in constructive ways which reduce stress and result in satisfactory outcomes. Over the years many approaches have been developed to solve conflicts in organizations. Conflict literature provides many models and

approaches of dispute resolution. The traditional approaches have created dissatisfaction among disputants and become costly in terms of money, time, and energy. Unlike traditional models of conflict resolution, such as courts and administrative decisions, alternative dispute resolution (ADR) models emphasize informality, face to face communication, problem-solving orientation, parties shaping the processes, decisions by consensus, and, if necessary, third party assistance.

Continuum of Conflict Resolution Approaches

Moore (1986) stated that people in conflict have a variety of means of resolving their disputes. Reactions to conflict include avoidance, informal discussion and problem solving, negotiation, mediation, formal resolution processes (grievance, arbitration, administrative action, etc.), legal proceedings (judicial decision, legislative decision), and extra-legal actions (violence, coercion, etc.). These reactions to conflict resolution represent a continuum of conflict management and resolution approaches (see Figure 1).

INSERT FIGURE 1 ABOUT HERE

Figure 1 illustrates some conflict resolution approaches. Moore (1986, p. 4) states that

> Each of these options varies concerning the formality of the process, the privacy of the approach, the people involved, the authority of third party (if there is one), the type of decision that will result, and the amount of coercion that is exercised by or on the disputing parties. On the left-hand of the continuum are informal, private procedures that involve only the disputants. On the other end, one party relies of coercion and often on public action to force the opposing party into submission. In between are various approaches.

This paper focuses on the left-hand side of continuum and discusses the limitations of the other approaches in solving disputes.

Limitations of Traditional Dispute Resolution Processes

Literature on conflict resolution in recent years has questioned the role of traditional dispute resolution processes for "failing to provide sufficient opportunity for dialogue among affected contenting parties" (Stephenson & Pops, 1991, p. 17). In the early 1970s, the American Bar Association pointed out the popular dissatisfaction with the administration of justice by the judicial system (Goldberg, Sander, & Rogers, 1992; Ide, 1993). The same organization, therefore, sponsored a national conference on the causes of popular dissatisfaction with the administration of justice. That was the beginning of the ADR movement. The Bar Association suggested that "alternative forms of dispute resolution, in particular mediation and arbitration, would ease congested courts, reduce settlement time, and minimize costs" (Scimecca, 1993, p. 212). Since 1970s ADR has grown rapidly in the United States (Breslin & Rubin, 1995; Ide, 1993; Mills, 1991). Susskind & Cruikshank (1987) stated that good conflict resolution should share four characteristics: fairness, efficiency, wisdom, and stability. The authors believe that the fairness, efficiency, stability of traditional approaches in solving disputes are in question. Courts and legislative institutions are two main dominant traditional conflict resolution approaches that feature these limitations and shortcomings.

Limitations of Representative Democracy

(a) increasing government accountability,
(b) the tyranny of the majority,
(c) lack of long-term commitment,
(d) inequalities of voting process,
(f) today's technical complexities, and
(g) the winner-takes all mind-set (Susskind &

Cruikshank,1987)

Shortcomings of Courts

(a) procedural emphasis,
(b) continuing legal battles,
(c) ineffective decision making,
(d) technical complexities, and
(f) costs (time, human energy and emotion, money)

Susskind & Cruikshank (1987, p. 76-77) stated that

> [w]e can no longer expect our system-as flexible and stable as it has proven in the past-to accommodate endless tinkering. We have put effective tools, including our three branches of government, to inappropriate tasks. It is not surprising that we are dissatisfied with the results.

Two alternative processes, negotiation and mediation, will be summarized in the following pages. Those approaches are not intended to take the place of the traditional court system and democratic decision making processes, but rather provide opportunity for dialogue among the disputants, assert "win-win" decisions, and promote open and informal communication between parties.

Alternative Dispute Resolution Processes

Alternative Dispute Resolution (ADR) has received wider acceptance of practice (Carpenter & Kennedy, 1988; Goldberg, Sander, & Rogers, 1992; Mills, 1991; Scimecca, 1993; Girard & Koch, 1996; Hall, 1993; Breslin & Rubin, 1993; McDermott & Berkeley, 1996).

Alternative dispute resolution refers to "a variety of approaches that allow the parties to meet face to face to reach a mutually acceptable resolution of the issues in a dispute or potentially controversial situation...all are voluntary processes that involve some form of consensus building, joint problem solving, or negotiation" (Bingham, 1986, xiv). This definition

does not include litigation, administrative procedures, and arbitration. The two most widely used alternative approaches to dispute resolution are negotiation and mediation.

a. Negotiation

Over the past two decades, researchers have studied and emphasized the importance of negotiation in solving disputes in different settings and circumstances (Breslin & Rubin, 1995; Fisher, Ury, & Patton, 1991; Hall, 1993; Sandole, 1993). Negotiation is the most common form of alternative dispute resolution. Negotiation refers to

> a bargaining relationship between parties who have a perceived or actual conflict of interests. The participants voluntarily join in a temporary relationship designed to educate each other about their needs and interests, to exchange specific resources, or to resolve one or more intangible issues such as the form their relationship will take in the future or the procedure by which problems are to be solved. (Moore, 1986, p. 5)

The most popular approach was developed by Fisher, Ury, and Patton, called "principled," "interest-based," "problem-solving," and "win-win." Fisher, Ury, & Patton (1991) identified basic elements of negotiation. These elements, as they pointed out, can be used under almost any circumstance, and consist of the following steps:

1. Separate the people from the problem.
2. Focus on interests, not positions.
3. Invent options for mutual gain.
4. Insist on using objective criteria.

b. Mediation

Mediation involves the assistance of an acceptable, impartial, and neutral third party. The third party is a mediator who helps parties to resolve their differences. Unlike an arbitrator or judge, a mediator has no power to impose an outcome

on disputing parties. Mediation refers to "the intervention into a dispute or negotiation by an acceptable, impartial, and neutral third party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute" (Moore, 1986, p. 14). Since mediation means the involment of a third party, the selection and role of a mediator are crucial. Selection of a mediator should be carefully considered and should have some prerequisites: impartiality, neutrality, process skills, and ability to handle sensitive information (Carpenter & Kennedy, 1988; Moore, 1986; Susskind & Cruikshank, 1987). The role of mediator includes serving as the opener of communication channels, the legitimizer, the process facilitator, the resource expander, the problem explorer, the agent of reality, the scapegoat, and the leader (American Arbitration Association as quoted in Moore, 1986). In the dispute resolution process, the mediator plays a crucial role. It works because he or she depersonalizes issues, handles emotions, observes and comments, and provides model behavior and negotiation techniques. The timing for the intervention of a mediator is also important. Carpenter & Kennedy (1988, p. 189) suggest that in the following conditions, a mediator is needed: (1) when negotiation is deadlocked; (2) when the parties need help in establishing communication; (3) when sensitive information is involved; (4) when negotiation is threatened by disagreements inside groups; and (5) when a process is not working. In many instances, a mediator works well because people expect change when a third party enters.

Implications for Educational Settings

Violence and dispute in schools have become reality and part of life (Curcio & First, 1993; DeJong, 1994; Girard & Koch, 1996; Katz & Lawyer, 1993, 1994; Lantieri & Patti, 1996; McCormick, 1988; McCuen, 1995; Morse & Ivey, 1996). The causes of the conflict in schools include a steady rise in general environmental violence, changes in the family environment, economic and

demographic shifts, poor self-esteem, institutional racism and discrimination, violence associated with drug and alcohol use, and the proliferation and use of handguns (Sherman, 1994).

When conflict within schools is inevitable as within any organization, ways must be found to manage the dysfunctional affects of conflict. Conflict must be, at least, managed effectively if all conflict cannot be solved. Adversarial relationships are not productive in school settings; rather, cooperation is to be fostered. People need to be able to work together on behalf of students. Schools need to help staff members and students develop skills and attitudes which will lead to conflict management behaviors. Alternative dispute resolution models emphasize problem solving with all parties participating in efforts to find mutually acceptable options to the issues in a dispute and to deal with the conflict. Furthermore, alternative approaches can provide a different framework and mode of thinking in solving disputes among parties.

Such alternative approaches have been employed with students in order to help young people gain skills that will enable them to deal with conflict in ways that are not violent or adversarial (see Girard & Koch, 1996; Mediation in the Schools, 1985; Wilburn & Bates, 1997). Instead of relying on the traditional systems of dispute resolution, the process of mediation, especially peer mediation, will create an environment where adults and students come together to discuss the issues that they are facing by using ADR models. According to Girard & Koch (1996, p. xvii), "conflict resolution programs in schools, particularly peer mediation models, have proliferated in elementary and secondary schools throughout the United States, and college campuses have experimented with ombudsperson positions, peer mediation, and staff training in conflict resolution."

There are few studies concerning the role of ADR in schools. Dejong (1994) emphasized the importance of expanding peer mediation programs from individual classrooms and schools into the larger arenas of neighborhoods to solve school-based violence. The

author believes that conflict resolution principles such as active listening, expression of feeling, perceptive-taking, cooperation, negotiation, and how to interrupt expressions of bias must be taught to teachers, students, and parents. Moore & Batiste (1994) emphasized the importance of nonviolent conflict resolution programs to provide needed skills and techniques designed to promote communication, understanding, problem solving, critical thinking, and self-esteem. Munoz & Tan (1994) specifically discussed the importance of applying alternative dispute resolution principles and skills to nontraditional centers such as those working with community policing officers, youth workers, and young people in a retreat format. In addition to using ADR principles and techniques in resolving school-based disagreements, ADR can also be useful tool in addressing the issues and disputes between school administration and teacher unions.

Summary and Conclusion

The limitations of traditional dispute resolution processes indicate that we need alternative methods of dispute resolution. Negotiation and mediation are two alternative models in understanding, analyzing, and resolving disputes in educational organizations. These alternative dispute resolution models emphasize informality, face to face communication, problem-solving orientation, participation by the parties to the process, decisions made by consensus, and, if necessary, third party assistance. These characteristics of ADR distinguish itself from other traditional approaches and provide more flexible processes with less transaction costs, high satisfaction with outcomes, and positive relationships as well as durable solutions.

ADR models provide an appropriate framework for solving disputes in educational settings. In order to be successful in using alternative conflict resolution approaches in schools, prior training and hard work is required because schools are peopled organizations which are shaped by human emotion and interpersonal relations. According to Girard & Koch (1996, p. 77), for an

effective practice of these models in schools, "conflict resolution processes-negotiation, mediation, and consensus building-need to be studied, observed, modeled, and practiced before they can be effectively utilized." ADR has outstanding implications for educational settings where violence and dispute increase everyday. We cannot predict than in the 21st century, school will be safer than today. What we can predict is that with alternative approaches we can create an environment where students communicate each other and solve their disputes on a face to face basis and in an informal environment.

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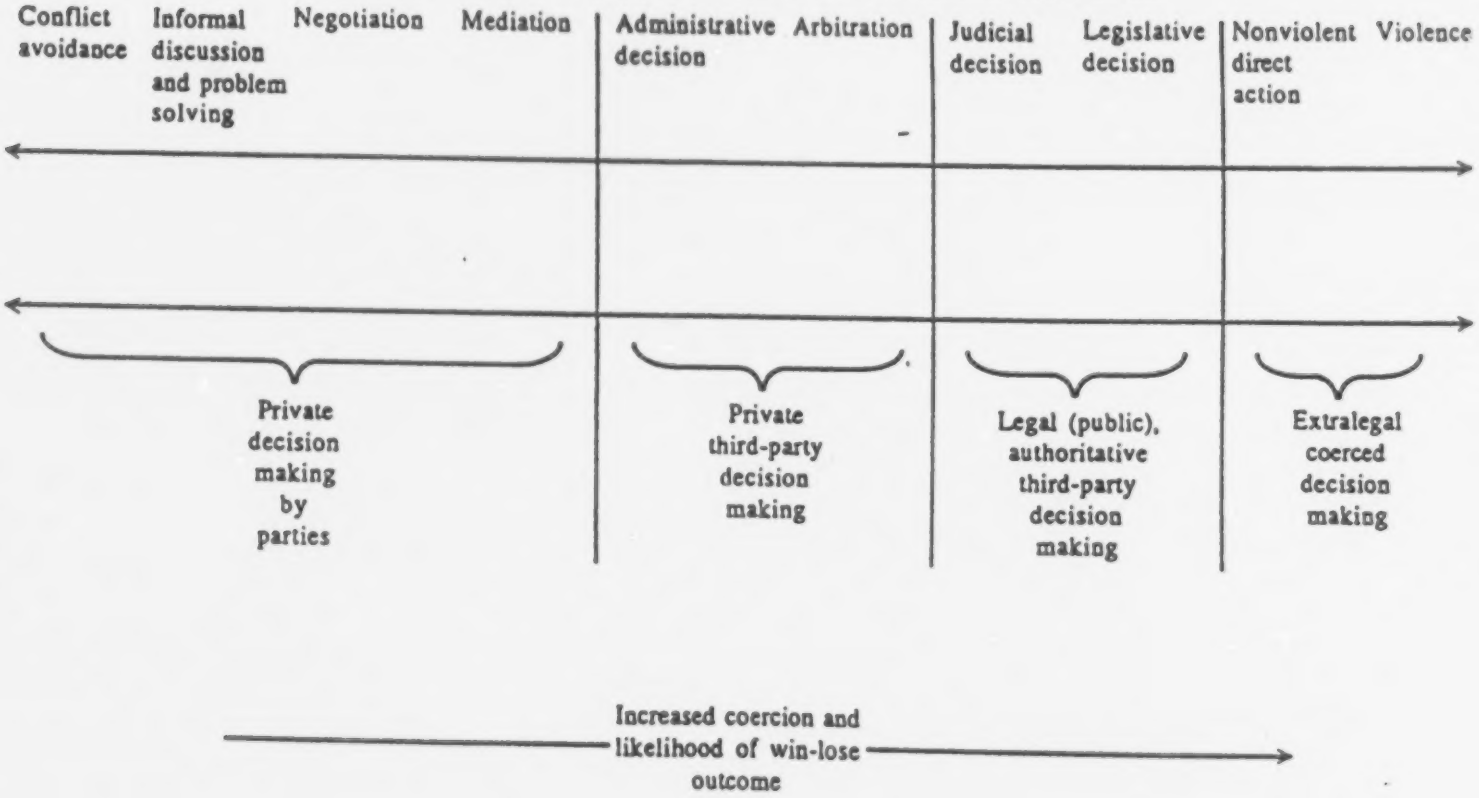
Figure 1. Continuum of Conflict Management and Resolution Approaches.



Source: Moore, C. W. (1986). *The mediation process: Practical strategies for resolving conflict.* San Francisco, CA: Jossey-Bass. (p. 5).